

REMARKS

Claims 7-10, and 23-37 were pending. All stand rejected. Claim 26 has been amended. Claims 7-10, 23-25 and 33-37 have been canceled. Claim 38 is new. Therefore, claims 26-32 and 38 are currently pending. The applicants request further examination and reconsideration in view of the amendments made above and the remarks set forth below.

Rejections under 35 U.S.C. § 103(a):

The examiner has rejected claim 26 as being unpatentable over Smith (U.S. Patent No. 3,377,626), Shipcott (U.S. Patent No. 5,245,709) or Carroll et al. (U. S. Patent 4,571,748) in view of Tee, Jr. (U.S. Patent No. 4,416,536).

The applicants have amended claim 26 to overcome the examiner's objections. In particular, claim 26 has been amended to recite an apparatus comprising an "eyeshield comprising a single layer of material." The support for this amendment can be found in the applicants' disclosure at least in Figures 13a-d and on page 5, lines 15-16. In addition, claim 26 has been amended to clarify that "a nose-bridge portion of the cushioning structure is affixed only to a single surface of the eyeshield." The support for this amendment can be found in the applicants' disclosure at least in Figures 13a-d, Figure 14 and on page 5, lines 17-18. No new matter has been added.

Tee, Jr. discloses an eyeglass lens piece with rear view reflective surfaces. Tee, Jr., Title. The eyeglass lens piece includes an optically correct viewing area. Tee, Jr., column 9, lines 5-7.

Smith discloses two sets of goggles. Smith, Figures 1-8. The first set of goggles is shown in Figures 1-7. The second set of goggles is shown in Figure 8. The second set of goggles is identical to the first, except that the sidewalls are eliminated and the inner lens is formed with much less curvature. Smith, column 3, lines 51-56. Both sets of goggles include a lens structure with inner and outer lenses. Smith, column 2, lines 22-23. Both sets of goggles include a box like shell that supports the lens structure. Smith, column 2, lines 51-53.

Carroll et al. disclose a frameless goggle that includes a lens structure. Carroll et al., column 2, lines 39-43. The lens structure disclosed includes inner and outer transparent lenses. Carroll et al., column 2, lines 39-43. A cushioning material is secured to the periphery of the lens. Carroll et al., column 3, lines 61-63.

Shipcott discloses protective eyewear that includes a lens. Shipcott, column 4, lines 14-15. The eyewear also includes a plurality of soft yielding members affixed to the interior surface of the lens for contacting the area around the wearer's eyes and forehead while the eyewear is being worn. Shipcott, column 5, lines 6-19. The soft yielding members are waterproof and made from closed cell sponge or rubber tubing. Shipcott, column 5, lines 20-22. In addition, the eyewear includes a nosepiece with a groove. Shipcott, column 5, lines 59-61. The nose piece is made from a waterproof material such as rubber. Shipcott, column 5, lines 62-64. As shown in Figures 1-3 the nosepiece is a non-planar and is attached to at least two sides of the eyewear via the grove in the nosepiece. This attachment of the nosepiece to both surfaces of the eyewear can be seen clearly in Figure 1 which shows two parallel lines at the intersection of the nosepiece and the lens. This can also be seen in Figures 2 and 3 which show the nosepiece without dashed lines while the soft yielding members are shown with dashed lines in Figure 2 and with solid lines in Figure 3. The nosepiece of Shipcott is sufficiently thick to hold the lens away from the nose and surrounding areas of the face of the wearer to assist in allowing the wearer to wipe clear the eye pockets and provide free air and water flow spaces. Shipcott, column 5, line 64 to column 5, line 1.

The examiner has suggested that claim 26 is unpatentable because it would have been obvious to combine the goggles as disclosed by Smith, Shipcott or Carroll et al., with the optically correct viewing area as disclosed by Tee, Jr.

Claim 26 as amended recites an eyeshield comprising a single layer of material having and an optically correct viewing area. This eyeshield also includes a cushioning structure that includes a plurality of vents for allowing air to circulate behind the eyeshield. In addition a nose bridge portion of the cushioning structure is attached only to a single surface of the eyeshield. The prior art as cited by the examiner taken singly or in combination does not suggest or disclose an eyeshield including these features.

The goggles as disclosed by Smith and Carroll et al. are anti-fogging goggles. These anti-fogging goggles are constructed with lens structures that include an inner and outer lens. The applicants have amended claim 26 to indicate that the eyeshield is constructed from a single layer of material, thus distinguishing it from Smith and Carroll et al. The applicants submit that there is no hint, teaching or suggestion to modify either of these references to include a single

lens at least because such a modification would defeat the anti-fogging purpose of the dual lenses.

The goggles as disclosed by Shipcott include a non-planar waterproof nose piece that is attached to at least two surfaces of the eyeshield. The applicants have amended claim 26 to indicate that the nose-bridge portion of the cushioning structure is affixed to a single surface of the eyeshield. The applicants submit that there is no hint, teaching or suggestion to modify the nose piece of Shipcott as in claim 26 since this would defeat Shipcott's stated purpose that the nose piece holds the lens away from the nose and the surrounding area so that the wearer can wipe clear the eye pockets.

The applicants have amended the application to include new claim 38 which describes an eyeshield with a clear viewing area. The support for new claim 38 can be found at least on page 2, lines 13-14 of the applicants' disclosure. No new matter has been added. Claim 38 is allowable at least because it is dependent from an allowable base claim.

In sum, the cited art does not include a motivation to combine the references to encompass the apparatus as described in claim 26 as currently amended. Therefore, claim 26 is allowable. Claims 27-32 and 38 are allowable at least because they are dependent from claim 26.

In view of the above, the applicants respectfully submit that all of the pending claims are now allowable. Allowance at an early date would be greatly appreciated. Should any issues remain, the examiner is encouraged to telephone the undersigned at (408) 293-9000 to discuss the same so that any outstanding issues may be expeditiously resolved.

Law Offices of Derek J. Westberg

Dated: June 15, 2004



Derek J. WESTBERG (Reg. No. 40,872)